IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

W.P.NO.1710 OF 2006

Atlanta Arcade Premises
Co.Op.Society and Anr. ..Petitioners

Vs.

Municipal Corporation for
Greater Mumbai and 5 Ors. ..Respondents

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Mr.Virag V.Tulzapurkar Senior Counsel with
Ms.Alpana Ghone i/b Sonal Doshi and Co.
for Petitioners
Mrs.A.K.Savla Adv. for Respondent Nos.1 to 5
Mr.V.M.Phal AGP for Respondent No.6

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CORAM: F.I.REBELLO AND
SMT.V.K.TAHILRAMANI,JJ.
DATE : JULY 19, 2006

P.C.

1. Heard the learned counsels for the parties.

2. The petitioners are aggrieved by the action of the Respondents disconnecting the water supply on failure by the petitioners to pay the sewerage tax. It appears that there were some disputes regarding water tax which has not been paid. The short question which we have been called upon to answer is whether it was open to the Respondents to disconnect

water supply for failure to pay the sewerage tax. On behalf of Respondents, learned counsel points out that the petitioners are liable to pay sum of Rs.45 lakhs towards sewerage tax. Our attention is invited to Rule 4.7 of the Rules framed in exercise of powers under Section 169 and 276 of the Bombay Municipal Corporation Act, 1888 as amended from time to time by the Standing Committee. Sections 169 and 276 deal with payment of water charges and water tax. There is no reference in that Section in so far as sewerage tax is concerned. Rule 4.7 therefore, will have to be read qua Section 169 read with Section 276 of the Act. Merely because, following words have been added "part payment of water charges and sewerage charges will be accepted", will not result in holding that Rule 4.7 also empowered the Respondents to disconnect for failure to pay the sewerage charges. Disconnection in Rule 4.7 is in respect of failure to pay the bill. That bill only will be referable to the amount payable under Section 279 as per the Rules framed under Section 169 and 276 of the Bombay Municipal Corporation Act. As pointed out earlier, the Rules have not been framed under Section 142. If sewerage tax is included in the Rule 4.7, that would be ultra-vires sections 169 and 276. Considering

that and on harmonious construction and to avoid invalidation of the Rule, it will have to be read that Rule 4.7 contemplates disconnection only for non-payment of water tax or water charges.

3. The Standing Committee of the Corporation has independently framed Rules which are common as the Sewerage and Waste Removal Rules in exercise of power under Section 170. Rules do not confer any power on the Respondents to disconnect water supply for failure to pay the sewerage charges. In our opinion, therefore, the Respondents acted without authority of law in disconnecting the water connection of the petitioners for failure to pay the sewerage tax. It is also always open to the Respondents to recover the sewerage tax by other coercive methods which would be available to them in law. However, they could not have disconnected the water supply.

4. Considering the above, the petition deserves to be allowed. The learned counsel for the Respondents points out that there are some charges to be paid for the purpose of reconnection. On the Respondents intimating to the petitioners within a period of one week from today, the amount which is due and payable

towards reconnection charges, the petitioners to pay reconnection charges with additional security deposit if any. On such deposit being made, the Respondents to reconnect the water supply at any rate not later than four days thereafter.

5. If there is lacuna in the Sewerage Rules for disconnection, it will be open to the Respondents to take such steps which they are entitled to. Water Department of the Respondents to reconnect the water supply without N.O.C. from the Assessment Collector Department.

6. Petition is allowed accordingly.

[F.I.REBELLO, J.]

[SMT.V.K.TAHILRAMANI,J.]